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REVIEW SUB-COMMITTEE

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O. Eng.

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POSSIBLE AMENDMENTS TO THE EXPLANATORY NOTES TO  
HEADINGS 84.33 AND 87.01 TO CLARIFY  
THE CLASSIFICATION OF RIDING LAWN MOWERS

(Item III.C.15 on Agenda)

I. BACKGROUND

1. On January 22, 2003, the Secretariat received a note from the **South African** Administration concerning a proposal to amend the Explanatory Notes to headings 84.33 and 87.01 in order to clarify the classification of certain “ride-on” lawn mowers designed with a permanent mowing apparatus. The note is reproduced below.

II. NOTE FROM SOUTH AFRICA

2. “The goods at issue are what are commonly referred to in the trade as “ride-on” lawn mowers. The principal function of these machines is that of mowers, but they have other optional accessories as well. They are further presented as functional units also adapted for performing complimentary functions such as thatching, scarifying, or even snow plowing. The problem arises however when, as is often the case, the “basic units” are imported without any attachments. The commentary under (21) on page 1478 of the Explanatory Notes to heading 84.33 refers. The salient part which is causing confusion is the following : “This heading also covers lawn mowers, known as riding lawn mowers, consisting of three or four wheeled basic machines fitted with a driving seat **and having a permanently attached cutter**, i.e. one which is only removed for repair or maintenance. Since their principal function is the mowing of lawns, they remain in this heading even if they have a coupling device for hauling or pushing light attachments such as a trailer.”
3. The problem that this administration faces lies in the highlighted portion, referring to the permanently attached cutter. This implies that in order for the machine to be classified in heading 84.33, the cutter needs to be mounted or attached at the time of importation. This is not concurrent with the latest technology in this particular field. It has been found that this

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has created a particular loophole that has been exploited in the importation of these machines into South Africa. It has furthermore even gone as far as litigation, and the court found this particular wording ambiguous enough to pass judgement against South African Customs.

4. It is common cause that the “basic machines” that are referred to in the commentary, will, if not fitted with any attachments, or when the principal function can not be determined, be classified in heading 87.01 as being a tractor. It can thus be argued that the machine in question is essentially designed for “pulling” or “pushing”. It is to the importer's advantage, in the South African context, from a duty perspective, to clear the mowers in question within heading 87.01, rather than in heading 84.33 where they properly fall to be classified.
5. Chapter Note 2 of Chapter 87 states :

“2.- For the purposes of this Chapter, “tractors” means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods.

Machines and working tools designed for fitting to tractors of heading 87.01 as interchangeable equipment remain classified in their respective headings even if presented with the tractor, and whether or not mounted on it.”
6. The tractors of heading 87.01 are explained in the HSEN on page 1545 [8<sup>th</sup> paragraph on page 1731 of the 2002 Explanatory Notes] under the heading “Tractors fitted with other machinery” *inter alia* as follows :

“On the other hand this heading **does not cover** the propelling bases of machines referred to for example, in **headings...84.32**, in which the propelling base, the operating controls, the working tools and their actuating equipment are specially designed for fitting together to form an integral mechanical unit... As a general Rule, propelling bases forming an integral part of a machine designed for.... handling.... etc can be distinguished from tractors of this heading by their special constructional features... ”.
7. Notes 3 and 4 to Section XVI provide *inter alia* :
  3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole...are to be classified as if consisting only of that component or as being that machine which performs the principal function.
  4. Where a machine (including a combination of machines) consists of individual components (whether.... interconnected.... by transmitting.... or other devices) intended to contribute together to a clearly defined function covered by one of the headings of Chapter 84.... then the whole falls to be classified in the heading appropriate to that function.
8. The General Explanatory Notes to the Notes to Section XVI on page 1226 [paragraph 1 on page 1387 of the 2002 Explanatory Notes] provide under the heading (IV) **INCOMPLETE MACHINES** (See GIR 2(a)) for : “Throughout the Section any reference to a machine.... covers not only the complete machine but also an incomplete machine... ”.

9. [Rule] 2 (A) provides inter alia : “Any reference in a heading to an article shall be taken to include a reference to that article incomplete.... provided that, as presented the incomplete...article has the essential character of the complete article.”
10. Whilst all the quoted Notes have relevance, they do constitute a problem when it comes to this particular scenario which relates to this particular submission. The Notes can be manipulated in this particular classification instance, to suit a particular interpretation.

#### Proposed Amendments

11. To avoid the potential problem of arguments being put forward for tractors of heading 87.01, it is therefore suggested that the wording to the relevant Explanatory Note [to heading 84.33] be amended, to remove the proviso regarding the “permanently attached cutter”. The following wording is suggested to the commentary under (21) on page 1478 of the Explanatory Notes :

“The heading also covers lawn mowers, known as riding lawn mowers, consisting of three or four wheeled basic machines fitted with a driving seat and which are designed for the principal purpose of mowing, whether or not imported with their cutter.”

12. Furthermore, an exclusion to heading 87.01 is suggested in the small print in the middle of page 1731 of the Explanatory Notes to heading 87.01.

“This heading furthermore does not cover tractor-type machines, which are designed principally as ride-on lawn mowers, even if imported without any attachments. Such machines would remain classifiable within heading 84.33.”

13. This administration has taken note of previous documents from the Secretariat with regard to this issue namely Docs 28.864, 29.024, 29.755 and 29.610, but is non the wiser as to the reasoning behind the insertion of this particular paragraph relating to ride-on lawn mowers.
14. This administration is of the view that these amendments to the Explanatory Notes could go a long way towards clarifying the position from a classification perspective, at the time of importation. It would be interesting to have the view of the Secretariat in this regard, as well as other administrations that may have encountered a similar problem.”

### III. SECRETARIAT COMMENTS

15. The **South African** Administration raises the concern that the current Explanatory Notes to headings 84.33 and 87.01 could be interpreted to allow classification of certain riding lawn mowers, designed with permanently affixed mowing units and classified in heading 84.33, to be classified in heading 87.01 when presented without the mowing units attached. In order to clarify the classification of such riding lawn mowers, even when presented without mowing units attached, the **South African** Administration proposes amendments to the Explanatory Notes to headings 84.33 and 87.01.
16. The concerns raised by **South Africa** are twofold. First, there is the concern with regard to misclassification of a riding lawn mower that is presented with various accessories for performing tasks other than mowing. Second, there is the concern with regard to the

misclassification of a riding lawn mower that is presented without the mowing unit. No specific product was submitted as a basis for determining the nature of a riding lawn mower with a permanently attached mowing device. Although it may be preferable to have information on a specific product, the Secretariat is aware of the fact that the design and construction of riding lawn mowers may have changed over the years. Therefore, it may be preferable for the Sub-committee to review the proposal as an opportunity to clarify what constitutes a “permanently attached” mower for purposes of heading 84.33.

17. The **South African** Administration states that the current technology in the design of riding lawn mowers is such that they are typically shipped without the mower unit attached. It appears that in many models of riding lawn mowers the mower units, rather than being incorporated with the transport wheels and housing of the actual riding mower, are designed to be detachable so that the propelling base can be more effectively used with other attachments, such as small trailers, snow blowers, snow blades, rotary brushes and other types of machinery.
18. Classification, of course, depends on the characteristics of a specific good. The good described by the **South African** Administration is a riding lawn mower that is designed (1) principally as a lawn mower, (2) with a cutter that is capable of being removed from the propelling unit, (3) for the purpose of facilitating the use of other implements with the propelling unit. Based on the discussion provided in the Note, these machines may be presented with the cutter and other attachments, or without the cutter or other attachments. Were it not for the description of these machines as having the “principal purpose” for mowing lawns, the description also applies to various types of small tractors which would otherwise be classified in heading 87.01. No pictures or specific models were indicated by the administration.
19. We can agree with the administration that the competing headings may include heading 84.33 and, together with consideration of Note 2 to Chapter 87, heading 87.01 :

Heading 84.33 Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 84.37.

Chapter Notes [Chapter 87]

2.- For the purposes of this Chapter, “tractors” means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods.

Machines and working tools designed for fitting to tractors of heading 87.01 as interchangeable equipment remain classified in their respective headings even if presented with the tractor, and whether or not mounted on it.

Heading 87.01 Tractors (other than tractors of heading 87.09).

20. As pointed out by the administration, the Explanatory Note to heading 84.33 provides some guidance as to the nature of certain grass mowers of that heading which are known as “riding lawn mowers” by describing them as “having a permanently attached cutter, i.e., one which is removed only for repair or maintenance”. A review of different Web sites confirms

the statement from the administration that there is a wide range of products described as riding lawn mowers that have removable cutters and that are able to function with various other attachments. There is a wide variety of designs. Although it may not be possible to determine the actual construction of the mowers from advertising literature available on the Internet, the Secretariat offers the suggestion that the members review the products of Schweiss, Jacobsen, Seco Group, Gianni Ferrari, New Holland, John Deere, White, Shibaura, Ingersol and various other manufacturers listed on the following website :

[http://www.lawnmowerdealers.net/who\\_what.htm](http://www.lawnmowerdealers.net/who_what.htm).

21. The amendments proposed by South Africa are based on the understanding that certain types of riding machines are so designed for the principal purpose of riding lawn mowers and that any additional function is secondary. The amendments to the Explanatory Notes would change the current characterisation of the riding lawn mowers of heading 84.33 from those mowers that have permanently attached cutters which are only removed for repair or maintenance to those mowers that are designed so that the cutter (i.e., mower deck) can be removed to allow the machine to be used for other purposes.
22. Machines of a kind designed for the principal purpose as riding lawn mowers may be designed with integral cutters and wheels. Use of the machines after removal of the cutters would not be practical or even possible. Even if these machines could also be used to pull a trailer or other implement, classification would appear to be clearly in heading 84.33 by application of GIR 1.
23. However, other machines of a kind designed and marketed for the principal purpose as riding lawn mowers may also be designed with removable cutters. These cutters may be suspended from the underside of the machines, from supports or lifting frames attached to the front of the machines, or from supports or lifting frames attached to the rear of the machines. In such cases, most of these machines also have various types of attachments or accessories that can be used with the machines. These include accessories that serve the mowing function (grass catchers, mulching decks, vacuum grass and leaf collectors) and accessories that perform other functions (front blades, snow throwers, chippers, tillers). The measure of the ability of a machine to perform these additional functions, such as snow removal by a snow blower, is often determined by the relationship of the power take-off to the drive train, the weight of machine on the drive wheels, or other design factors.
24. The Sub-Committee is being asked to expand the current description of “riding lawn mowers” of heading 84.33 to include riding lawn mowers which are designed with removable cutters. The Secretariat, however, is not certain that the language, as proposed, would provide sufficient guidance to distinguish between riding lawn mowers and machines that fall within the meaning of the term “tractor” for purposes of Note 2 to Chapter 87 and heading 87.01. Tractors are versatile machines that, in addition to pushing or pulling an implement or machine, are typically equipped with power take-off units to drive other machines attached to the tractor. Therefore, we would suggest consideration of additional criteria to narrow the proposed amendments in order to clarify that all riding lawn mowers, whether or not designed with a permanent cutter, remain classified in heading 84.33 and that tractors of heading 87.01 are not mistakenly classified in heading 84.33 simply because they are capable of use as a riding lawn mower.
25. Based on a review of the designs of different machines marketed as riding lawn mowers, we would suggest that the following characteristics could be included in the Explanatory Note to heading 84.33 : “zero turn” capability, front-mount cutters on machines

with single or dual trailing wheels, or mid-mount cutters on machines with front caster wheels. The intention is not to exclude certain types of riding mowers with mid-mount cutters. However, unless it can be demonstrated that a machine is designed principally to function with the mid-mount mower deck, then it would be prudent to leave this question for discussion when specific models are presented.

26. The Secretariat proposes the following text as an alternative for consideration by the Sub-Committee :

Page 1478. Delete the paragraph immediately following item (21) and substitute the following new paragraph :

“This heading also covers lawn mowers, known as riding lawn mowers, consisting of three or four wheeled basic machines fitted with a driving seat and which are designed for the principal purpose of mowing. Typically these machines may have “zero turn” capability, a permanently attached cutter (i.e., a mower deck which is removed only for repair or maintenance), a removable front-mount cutter combined with a single or dual rear caster wheel on the machine, or a mid-mount cutter combined with front caster wheels on the machine. Since their principal function is the mowing of lawns, they remain in this heading even if they have a coupling device for hauling, pushing or powering light attachments, such as a trailer, front blade or sweeper. Further, they remain in this heading whether or not presented with a cutter”.

27. In view of the expanded proposal for the Explanatory Note to heading 84.33, we do not believe it is necessary to amend the Explanatory Note to heading 87.01. Amendment of that Explanatory Note would be more appropriate if the Sub-Committee reviews machines which, arguably, could fall within the terms of heading 87.01.
28. Finally, concerning the origin of the current Explanatory Note on riding lawn mowers, a review of the Secretariat’s files reveals only that the text was initially proposed by the **EC** (Doc. 29.755, Annex I, page 14) and added in 1983 to the draft text during the development of the Explanatory Notes to Chapter 84. There does not appear to be a record of the discussion of the proposal. What is of interest is the fact that the text was drafted in 1983 and the current design of riding lawn mowers, as **South Africa** has noted, appears to have changed.

#### IV. CONCLUSION

29. The Sub-Committee is invited to consider the comments in paragraphs 2 to 10 submitted by the **South African** Administration and the proposals in paragraphs 11 and 12 to amend the Explanatory Notes in order to clarify the classification of certain riding lawn mowers. The Sub-Committee is also asked, in light of the Secretariat’s comments in paragraphs 15 to 28, to consider as an alternative the proposal in paragraph 26.

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